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FISH & RICHARDSON P.C. P.O. Box 1022 MINNEAPOLIS, MN 55440-1022			WOOD, WILLIAM H	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/651,697	Applicant(s) ROWE ET AL.
	Examiner William H. Wood	Art Unit 2193

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 28 March 2008.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-20,22,24,26-48,50,52,54-76,78,80 and 82 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-20,22,24,26-48,50,52,54-76,78,80 and 82 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsman's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____

5) Notice of Informal Patent Application

6) Other: _____

DETAILED ACTION

Claims 1-20, 22, 24, 26-48, 50, 52, 54-76, 78, 80 and 82 are pending and have been examined.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-15, 18-20, 22, 24, 26, 29-43, 46-48, 50, 52, 54, 57-71, 74-76, 78 and 80 and are rejected under 35 U.S.C. 102(b) as being anticipated by **Cheng et al. (USPN 6,151,643)**.

Claim 1

Cheng disclosed a computer-implemented method for updating software in a client environment, the client environment including an updater application (*column 7, lines 54-56, update of software product; column 9, lines 3-6, line 17, the updates are installed; column 7, lines 46-53, "client application" or updater application determines list installed of products including "applications, system utilities, drivers and other executables or resources" thus including the updater application*), the method comprising:

receiving update information from a stateless update server as part of an update process performed by the updater application (figure 1, element 102; column 13, lines 48-57) in the client environment, the update information identifying one or more available software products, the update information including update instructions, wherein: (column 3, lines 25-39; and column 12, lines 43-54, script);

the update server does not receive or evaluate information about the client environment, does not make decisions regarding the update process on the client environment, and does not control or monitor the update process on the client environment (figure 1, element 102; column 13, lines 48-57), and

the update instructions consist entirely of platform-independent instructions for the updater application (column 12, lines 30-45, script), the update instructions comprising scheduling instructions that the updater application, executes to schedule one or more requests for update information from one or more update servers, user interface instructions that the updater application executes to communicate with a user of the updater application, and manager instructions that the updater application

executes to manage the update process (column 7, lines 54-56, update of software product; column 9, lines 3-6, line 17, the updates are installed; column 7, lines 46-53, "client application" or updater application determines list installed of products including "applications, system utilities, drivers and other executables or resources" thus including the updater application; column 7, lines 5-11, scheduling; figures 3-6 demonstrate an interface customized from database data downloaded from server, see column 3, lines 29-32);

storing the received update instructions to supersede any previously received update instructions (column 3, lines 29-31); and

executing the received update instructions in the updater application to manage a software update process to schedule a first request for update information, to interact with the user to identify a first software product, and to retrieve and install the first software product in the client environment (column 7, lines 54-56, update of software product; column 9, lines 3-6, line 17, the updates are installed; column 7, lines 46-53, "client application" or updater application determines list installed of products including "applications, system utilities, drivers and other executables or resources" thus including the updater application; column 7, lines 5-11, scheduling; figures 3-6 demonstrate an interface customized from database data downloaded from server, see column 3, lines 29-32).

Claim 2

Cheng disclosed the method of claim 1, wherein:

executing update instructions in the client environment to identify suitable software products includes executing instructions to evaluate the client environment (*column 3, lines 32-39*).

Claim 3

Cheng disclosed the method of claim 2, wherein:

evaluating the client environment includes identifying software or hardware installed in the client environment (*column 3, lines 32-39*).

Claim 4

Cheng disclosed the method of claim 2, further comprising:

determining in the client environment when to request update information (*column 3, lines 27-29*).

Claim 5

Cheng disclosed the method of claim 4, wherein:

the update instructions include scheduling instructions (*column 7, lines 5-11*); and

determining in the client environment when to request update information includes executing one or more of the scheduling instructions (*column 7, lines 5-11*).

Claim 6

Cheng disclosed the method of claim 2, wherein:

executing update instructions to identify suitable software products includes executing instructions to interpret the update information identifying the available software products (*column 3, lines 25-39*).

Claim 7

Cheng disclosed the method of claim 6, wherein:

interpreting the update information includes determining whether new update instructions are required for processing the available software products (*column 3, lines 32-38*); and

if new update instructions are required, identifying suitable software products includes retrieving and executing the new update instructions in the client environment (*column 3, lines 45-49*).

Claim 8

Cheng disclosed the method of claim 2, wherein:

receiving an input selecting one or more of the suitable software products includes receiving user input selecting one or more of the suitable software products (*column 3, lines 40-41*).

Claim 9

Cheng disclosed the method of claim 2, wherein:

the available software products include one or more available software updates
(*column 3, lines 32-39*); and

executing update instructions in the client environment to identify suitable software products includes executing update instructions to identify one or more of the available software updates as suitable for software in the client environment (*column 3, lines 32-39*).

Claim 10

Cheng disclosed the method of claim 9, wherein:

receiving update information in the client environment includes receiving information indicating a version number and/or dates of last modification of each available software update (*figure 8, element 805*).

Claim 11

Cheng disclosed the method of claim 9, wherein:

executing update instructions to identify suitable updates includes executing instructions to identify updates of a software product installed in the client environment (*column 3, lines 32-39*).

Claim 12

Cheng disclosed the method of claim 11, wherein:

executing the instructions to identify updates of the installed software product includes executing instructions to identify updates that add optional components to the installed software product (*column 1, lines 29-30*).

Claim 13

Cheng disclosed the method of claim 11, wherein:

the installed software product has a first version number (*column 11, lines 61-63*); and

executing the instructions to identify updates of the installed software product includes executing instructions to identify updates that are operable to update the installed software product from the first to a second version number (*column 11, lines 61-63*).

Claim 14

Cheng disclosed the method of claim 9, wherein:

the update instructions are executed in the client environment by the updater application, the updater application being associated with one or more software products installed in the client environment (*column 9, lines 3-6*); and

executing update instructions to identify suitable updates includes executing update instructions to identify suitable updates that are unrelated to the software products associated with the updater application (*column 9, lines 3-6*).

Claim 15

Cheng disclosed the method of claim 9, wherein:

retrieving the selected software updates includes executing update instructions to identify installers for the selected software updates and retrieving the identified installers (*column 12, lines 9-54, figure 8, elements 825 and 826*); and

installing the retrieved software updates includes using the retrieved installers to install the retrieved software updates (*column 12, lines 9-54*).

Claim 18

Cheng disclosed the method of claim 2, wherein:

executing update instructions to identify suitable software products includes executing instructions to specify a user interface for updating software in the client environment (*figures 3-6*).

Claim 19

Cheng disclosed the method of claim 18, further comprising:

presenting a representation of at least a portion of the update information to a user in the specified user interface (*figures 3-6*).

Claim 20

Cheng disclosed the method of claim 2, wherein:

retrieving the selected software products includes retrieving the selected software products as digitally signed data (*column 16, lines 48-65*).

Claim 22

Cheng disclosed the method of claim 21, wherein:

receiving update instructions includes receiving update instructions as digitally signed data (*column 16, lines 48-65*).

Claim 24

Cheng disclosed the method of claim 2, further comprising:

caching the update instructions (*figure 1, element 101, client computer and column 24, lines 19-24, also “update instruction”*).

Claim 26

Cheng disclosed the method of claim 2, wherein:

the update instructions are specified in an interpreted computer language (*figure 8, element 826*).

Claims 29-43, 46-48, 50, 52, 54, 57-71, 74-76, 78 and 80

The limitations of claims 29-43, 46-48, 50, 52, 54, 57-71, 74-76, 78 and 80 correspond to the limitations of claims 1-15, 18-20, 22, 24, 26 and are rejected in the same manner.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 16-17, 28, 44-45, 56, 72-73 and 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Cheng** et al. (USPN 6,151,643) in view of **Johnson** (USPN 6,904,592).

Claims 16 and 44

Cheng did not explicitly state method of claim 15, though **Johnson** did as indicated, wherein:

executing update instructions to identify installers includes executing instructions to identify a sequence of two or more installers for updating a software product (**Johnson**: column 7, lines 17-23, patches); and

using the retrieved installers includes executing the two or more installer applications for updating the software product in an order defined by the identified sequence (**Johnson**: column 8, lines 15-40).

It would have been obvious to one of ordinary skill in the art at the time of invention to implement the updating and installation system of **Cheng** with version compatibility as found in **Johnson**'s teaching. This implementation would have been obvious because one of ordinary skill in the art would be motivated to ensure compatibility of updates with

current software in order to ensure update (**Johnson**: column 8, lines 16-17 and lines 25-31).

Claim 17 and 45

Cheng and **Johnson** disclosed the method of claim 16, wherein:

executing update instructions to identify installers includes executing instructions to identify dependencies between installer applications for updating the software product (*column 8, lines 15-40*).

Claims 28, 56 and 82

The limitations of claims 28, 56 and 82 correspond to the limitations of claims 1 and 16 and are rejected in corresponding manner.

5. Claims 27 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Cheng** et al. (USPN 6,151,643) in view of Applicant Admitted Prior Art (**AAPA**), non-traversed official notice according to MPEP 2144.03.

Claims 27 and 55

Cheng did not explicitly state the method of claim 26, wherein: the interpreted computer language is JavaScript or VBScript. **AAPA** is taken that it was known at the time of invention to make use of JavaScript or VBScript for performing functions in a computer. It would have been obvious to one of ordinary skill in the art at the time of

invention to implement the script of **Cheng** with JavaScript or VBScript. This implementation would have been obvious because one of ordinary skill in the art would be motivated to make use of a common and readily available script thus reducing development time and cost.

Response to Arguments

Applicant's arguments filed 28 March 2008 have been fully considered but they are not persuasive. Applicant argues **Cheng** fails to disclose "the update server does not receive or evaluate information about the client environment, does not make decisions regarding the update process on the client environment, and does not control or monitor the update process on the client environment" (claim 1).

The broadest reasonable interpretation of Applicant's claim language as further illustrated by Applicant's originally filed disclosure (Specification: page 6, lines 11-29), reads upon the cited prior art. Applicant's specification and claims recite, "the update server does not receive or evaluate information about the client environment, does not make decisions regarding the update process on the client environment, and does not control or monitor the update process on the client environment" (claim 1 and Specification, page 6). This phrase must be read in view of Applicant's further disclosure of "the update client ... sends one or more requests ... to the update server" (Specification: page 6, lines 13-14) and "the update server ... can be implemented in a stateless server. A stateless server has no information about previous actions that involved the server. Upon request, the stateless server provides requested data without

any further processing or consideration" (Specification: page 6, lines 23-26). Therefore, it is clear from Applicant's disclosure that the claims should be interpreted as: some information is sent from the client to the server so long as the server remains stateless and does not make decisions regarding "an update process". The fact that **Cheng's** service provider computer receives information from a client is entirely consistent with Applicant's definition, as both Applicant's server and **Cheng's** computer must receive information and, in order to function, must necessarily then make some "decisions" or "control" on that information.

Further, the broadest reasonable interpretation of Applicant's claim language requires the "update server" to not receive or evaluate information about the client environment. There is no reason to believe the "update server" portion of **Cheng's** system (that is the portion that sends the database of updates) receives or evaluates such information. In fact, **Cheng** indicates the "update server" does not maintain any such information (*column 13, lines 48-57*). This is a disclosure of a stateless update server ("the potential unreliability of non-stateless remote procedure call implementations by having the service provider computer ... perform the analysis"). Applicant's analysis of figure 7 does not establish analysis (receiving, evaluation, control, decisions) on the "update server" as the database is sent to the client for analysis. Whether databases are intended for use in analysis is not the same as the server performing the analysis.

Finally, that other portions of **Cheng's** service provider computer may or may not receive and evaluate information (user profiles or advertisements) does not indicate that

the "update server" portion performs these functions. The broadest reasonable interpretation of Applicant's claim language requires the update server does not make decisions regarding "an update process" (claim 1, lines 4 and 8-10). Clearly, with regard to **Cheng**, "an update process" reads upon the process whereby **Cheng's** stateless update server sends a database that is analyzed by the client computer. Any other processes of **Cheng** (whether characterized as update processes or otherwise) are irrelevant to the claim language as is. The claims are to "an update process" not all update processes or all processes in general.

Therefor, the rejections are maintained as indicated.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Correspondence Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Wood whose telephone number is (571)272-3736. The examiner can normally be reached 10:00am - 4:00pm Tuesday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lewis A. Bullock Jr. can be reached on (571)272-3759. The fax phone numbers for the organization where this application or proceeding is assigned are (571)273-8300 for regular communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR systems, see <http://pair-direct.uspto.gov>. For questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-3900.

/William H. Wood/
William H. Wood
Primary Examiner, Art Unit 2193
July 24, 2008